

	OAH 3-1005-21268-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Real Estate Salesperson License of Sean Patrick Rosensteel	FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION
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This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on January 18, 2011, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. The record closed at the conclusion of the hearing.

Michael J. Tostengard, Assistant Attorney General, appeared for the Department of Commerce (the Department or DOC). Thomas E. Brever, Esq., Foster & Brever, PLLC, appeared for Sean Patrick Rosensteel (the Respondent).

STATEMENT OF THE ISSUES

Is the Respondent's real estate salesperson's license subject to discipline because:

1. Respondent provided lenders with false liquid asset information on five occasions, and thereby demonstrated untrustworthiness and committed fraudulent, deceptive and dishonest acts or practices in violation of Minn. Stat. §§ 45.027, subd. 7(4); 58.12, subd. 1(b)(2)(iv) and subd. 1(b)(2)(v); and 82.35, subd. 1(b) and 1(f) (2008);

2. Respondent provided lenders with false income information on five occasions, and thereby demonstrated untrustworthiness and committed fraudulent, deceptive and dishonest acts or practices in violation of Minn. Stat. §§ 45.027, subd. 7(4); 58.12, subd. 1(b)(2)(iv) and subd. 1(b)(2)(v); and 82.35, subd. 1(b) and 1(f) (2008);

3. Respondent represented in loan documents that the down payment funds were his own and not borrowed on four occasions, and thereby demonstrated untrustworthiness and committed fraudulent, deceptive and dishonest acts or practices in violation of Minn. Stat. §§ 45.027, subd. 7(4); 58.12, subd. 1(b)(2)(iv) and subd. 1(b)(2)(v); and 82.35, subd. 1(b) and 1(f) (2008);

4. Respondent certified on loan documents on five occasions that he had been employed by Split Rock Realty for more than four years when the company had only been in existence for approximately two years, and thereby demonstrated untrustworthiness and committed fraudulent, deceptive and dishonest acts or practices in violation of Minn. Stat. §§ 45.027, subd. 7(4); 58.12, subd. 1(b)(2)(iv) and subd. 1(b)(2)(v); and 82.35, subd. 1(b) and 1(f) (2008);

5. Respondent omitted references to prior real estate purchases in loan documents on two occasions, and thereby demonstrated untrustworthiness and committed fraudulent, deceptive and dishonest acts or practices in violation of Minn. Stat. §§ 45.027, subd. 7(4); 58.12, subd. 1(b)(2)(iv) and subd. 1(b)(2)(v); and 82.35, subd. 1(b) and 1(f) (2008);

6. Respondent received kickbacks, without the lender's knowledge, in amounts between \$42,995 and \$56,996 for five properties purchased, and thereby demonstrated untrustworthiness and committed fraudulent, deceptive and dishonest acts or practices in violation of Minn. Stat. §§ 45.027, subd. 7(4); 58.12, subd. 1(b)(2)(iv) and subd. 1(b)(2)(v); and 82.35, subd. 1(b) and 1(f) (2008).

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On October 19, 2004, Respondent was licensed as a real estate broker in Illinois. The license expired on April 30, 2006.¹

2. On July 21, 2005, Respondent was licensed as a residential real estate salesperson in Minnesota. Respondent is currently not affiliated with a broker, and his license is inactive.²

3. On August 2, 2005, Tom Rosensteel, Respondent's brother, founded Split Rock Realty, LLC, the company with which Respondent formerly was associated as a real estate salesperson. Tom Rosensteel served as Split Rock Realty's President.³

4. The Respondent's parents own and operate Longwood Realty, LLC.⁴

¹ Ex. 39; Testimony of Sean Rosensteel.

² Ex. 1; Testimony of Matthew Boyer.

³ Ex. 3; Ex. 19; Test. of S. Rosensteel.

⁴ Test. of M. Boyer.

The Transactions

5. In the spring of 2007, Respondent purchased four properties in Ramsey and Otsego, Minnesota, as rental investments. He intended to lease the properties using two-year, lease-to-own contracts.

6. In the same timeframe, Respondent also purchased, from his family's company, Longwood Realty, LLC, another property in Minneapolis, which he used as his primary residence. In total, Respondent signed five purchase agreements in the spring of 2007.

7. Sometime after he signed several of the purchase agreements, Respondent met with Amri Elsafi, president and owner of The Mortgage Shop Service, Inc., at a coffee shop in Minneapolis and signed several blank Uniform Residential Loan Applications (URLA) intended to be used to obtain financing for the properties.

8. At the time Respondent met with Elsafi, he had been associated with Split Rock Realty as a sales person for approximately two years and was generating income of approximately \$3,000 or \$4,000 per month. According to his 2007 income tax returns, Respondent was self-employed and had business income of approximately \$60,000 for the year. In the spring of 2007, the balance of his Wells Fargo savings account was approximately \$63.05.⁵

9. Some time after meeting with Elsafi, the Respondent spoke with Elsafi by telephone and provided him certain financial information to use in completing the loan applications.⁶

10. Respondent closed on all five properties in July 2007. Respondent participated in the closings of each of the five real estate properties in Ramsey, Otsego and Minneapolis. During the closings he signed HUD Settlement Statements, verifying the accuracy of the information contained therein, including his monthly income and his bank account balance.⁷

11. Two of the four properties were rented and occupied at the time of closing, and the other two properties were occupied shortly thereafter. The housing market collapsed soon after Respondent purchased the properties, and the tenants moved out of each house.⁸

12. Respondent used none of his own money toward the down payment of any of the homes he purchased in Ramsey and Otsego; for those transactions, the funds for the down payments came from Amri Elsafi's bank accounts. It is not clear whether there was any down payment made with regard

⁵ Ex. 12.

⁶ Test. of S. Rosensteel.

⁷ *Id.*

⁸ *Id.*

to the Minneapolis Property purchased from Longwood Realty, LLC. At the time of closing, substantial commissions were paid to Options Plus Realty. After the closings, Options Plus Realty transferred approximately \$260,000 in “rebates” to the Respondent. The Respondent transferred some of the money back to Elsafi as reimbursement for the down payments, and he kept approximately \$70,000 of the rebated funds for his own use.⁹

13. Respondent’s real estate transactions are summarized below.

Purchase of 6112 146th Avenue NW, Ramsey, Minnesota

14. On February 9, 2007, Respondent signed a Real Estate Purchase Agreement for 6112 146th Avenue NW in Ramsey, Minnesota. The seller of the property was Northern Lakes Construction. The purchase price was listed as \$350,000 and the down payment was listed as \$35,000. Under “Agency Disclosures,” the agreement stated that Options Plus Realty was a facilitator for the buyer only and Sean Rosensteel of Split Rock Realty was a facilitator for the seller only. Under the category “Other Items” the agreement stated that the Seller was aware that the Buyer was a licensed real estate agent.¹⁰

15. The Respondent’s loan application for the property is dated May 10, 2007. The application provides that the source of the down payment was the Respondent’s checking or savings account, the balance of which was \$177,300. It further provides that he had been employed with Split Rock Realty for three years and eleven months, that his current position was Marketing and Development Manager, and that he had worked in the profession for five years. The application lists his monthly income as \$18,385. The purchase price was listed as \$350,000; the loan amount was listed as \$315,000; and the down payment was listed as \$34,511. Under the “Acknowledgement and Agreement,” Respondent specifically represented to the lender that the information provided was true and correct as of the date signed. Amri Elsafi signed as the lender’s assistant.¹¹

16. During a subsequent search of Amri Elsafi’s records pursuant to a search warrant, investigators found a forged bank account statement, showing a balance of approximately \$176,063 in the Respondent’s bank account.¹²

17. The Respondent used a cashier’s check dated July 24, 2007, in the amount of \$40,000, as the down payment for the property. The funds were withdrawn from Amri Elsafi’s Bremer Bank account, but the remitter was identified as Sean Rosensteel.¹³

⁹ Test. of S. Rosensteel.

¹⁰ Ex. 27.

¹¹ Ex. 7.

¹² Test. of S. Rosensteel; Ex. 12; Ex. 11.

¹³ Ex. 16; Test. of M. Boyer.

18. On July 24, 2007, the sale closed. The Department of Housing and Urban Development (HUD) Settlement Statement indicated that the purchase price was \$350,000, the new loan amount was \$315,000, and the cash from the borrower was \$37,274.83. In the "Additional Disbursements Exhibit," the statement indicated that \$26,005 was paid to Split Rock Properties Construction Consulting and that a commission of \$55,995 was paid from the seller's funds to Options Plus Realty. The Acknowledgement of Receipt of Settlement Statement, which appeared in the paragraph above Respondent's signature, stated: "I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction."¹⁴

19. On July 25, 2007, Options Plus Realty transferred \$54,400 from its account at Bremer Bank to the Respondent's account at Wells Fargo Bank for "rebate 146th Street."¹⁵

Purchase of 6118 146th Avenue, Ramsey, Minnesota

20. On February 9, 2007, Respondent signed a Real Estate Purchase Agreement for property at 6118 146th Avenue NW, Ramsey, MN. The seller of the property was Northern Lakes Construction of Minnesota, Inc. The purchase agreement identified the sale price of the property as \$350,000, and the cash down payment as \$35,000. Under "Agency Disclosures," the agreement stated that Options Plus Realty was a facilitator for the buyer only and Sean Rosensteel of Split Rock Realty was a facilitator for the seller only. Under the category "Other Items" the agreement stated that the Seller was aware that the Buyer was a licensed real estate agent.¹⁶

21. The Respondent's loan application for the property is dated May 10, 2007. The Application provides that that the source of the down payment was the Respondent's checking or savings account, the balance of which was \$177,000. It further provides that the Respondent had been employed with Split Rock Realty for three years and eleven months, that his current position was Marketing and Development Manager, and that he had worked in the profession for five years. His monthly income is stated to be \$18,385. The purchase price was listed as \$350,000; the loan amount was listed as \$315,000; and the down payment was listed as \$27,000. Under the category of "Declarations," Respondent indicated that none of the down payment was borrowed. Under the "Acknowledgement and Agreement," Respondent specifically represented to the lender that the information provided was true and correct as of the date signed. Amri Elsafty signed as the lender's assistant.¹⁷

¹⁴ Ex. 22.

¹⁵ Ex. 32; Test. of S. Rosensteel.

¹⁶ Ex. 28.

¹⁷ Ex. 8.

22. The Respondent used a cashier's check dated July 24, 2007, in the amount of \$40,000, as the down payment for the property. The funds were withdrawn from Amri Elsafy's account at Bremer Bank, but the Respondent was identified as the remitter.¹⁸

23. The sale closed on July 25, 2007. The HUD Settlement Statement indicated that the purchase price was \$350,000, the new loan amount was \$315,000, and the cash from the borrower was \$37,281.19. In the "Additional Disbursements Exhibit," the statement indicated that \$26,005 was paid to Split Rock Properties Construction Consulting and that a commission of \$55,995 was paid from the seller's funds to Options Plus Realty. The Acknowledgement of Receipt of Settlement Statement, which appeared in the paragraph above Respondent's signature, stated: "I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction."¹⁹

24. On July 27, 2007, Options Plus Realty transferred \$109,000 from its account at Bremer Bank to Respondent's account at Wells Fargo Bank. The wire transfer indicated the funds transferred were "rebates."²⁰

25. The lender foreclosed on the property in September 2009.²¹

Purchase of 6167 146th Avenue NW, Ramsey, Minnesota

26. On March 12, 2007, Respondent signed a Real Estate Purchase Agreement for property located at 6167 146th Avenue NW, Ramsey, MN. The seller of the property was Northern Lakes Construction of Minnesota, Inc. On the purchase agreement, the sale price of the property was listed at \$350,000 and the cash down payment was \$35,000. Under "Agency Disclosures," the agreement stated that Options Plus Realty was a facilitator for the buyer only and Sean Rosensteel of Split Rock Realty was a facilitator for the seller only. Under the category "Other Items" the agreement stated that the Seller was aware that the Buyer was a licensed real estate agent.²²

27. The Respondent's loan application for the property, dated May 10, 2007, indicates that the source of the down payment was the Respondent's checking or savings account, which had a balance of \$177,300. The application indicated that he had been employed with Split Rock Realty for three years and eleven months, that his current position was Marketing and Development

¹⁸ Ex. 14; Ex. 17; Test. of M. Boyer.

¹⁹ Ex. 23.

²⁰ Ex. 33; Test. of S. Rosensteel. This payment appears to represent rebates for two transactions, 6118 146th Avenue NW in Ramsey and 11257 77th Street in Otsego. See Finding No. 42 and n. 38.

²¹ Ex. 36.

²² Ex. 25.

Manager, and that he had worked in the profession for five years. The application identifies the Respondent's monthly income as both \$12,385 and \$18,385. The purchase price was listed as \$350,000; the loan amount was listed as \$315,000; and the down payment was listed as \$27,000. Under the "Acknowledgement and Agreement," Respondent specifically represented to the lender that the information provided was true and correct as of the date signed. Amri Elsafy signed as the lender's assistant.²³

28. The Respondent used a cashier's check dated July 13, 2007, in the amount of \$45,000, as the down payment for the property. The funds were withdrawn from Amri Elsafy's account at Bremer Bank, but the Respondent was identified as the remitter.²⁴

29. The sale closed on July 13, 2007. The HUD Settlement Statement for the property indicated that the purchase price was \$350,000, the new loan amount was \$315,000, and the cash from the borrower was \$39,164.47. In the "Additional Disbursements Exhibit," the statement indicated that \$26,005 was paid to Split Rock Properties Construction Consulting and that a commission of \$56,995 was paid from the seller's funds to Options Plus Realty. The Acknowledgement of Receipt of Settlement Statement, which appeared in the paragraph above Respondent's signature, stated: "I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction."²⁵

30. On July 17, 2007, Options Plus Realty transferred \$55,500 from its Bremer Bank account to the Respondent's account at Wells Fargo Bank for "6167 146th Ave."²⁶

Purchase of 2001 W 61st Street, Minneapolis

31. On April 19, 2007, Respondent signed a Real Estate Purchase Agreement for property at 2001 West 61st Street in Minneapolis. The seller of the property was Longwood Realty, LLC. The purchase price was listed as \$425,000, and the down payment was listed as \$42,500. Under "Agency Disclosures," the agreement stated that Options Plus Realty was a facilitator for the seller only and Sean Rosensteel of Split Rock Realty represented the buyer only. Under the category "Other Items" the agreement stated that the Seller was aware that the Buyer was a licensed real estate agent, and that the buyer was aware that the seller was a licensed real estate agent.²⁷

²³ Ex. 5.

²⁴ See Ex. 13; Ex. 15; Test. of M. Boyer.

²⁵ Ex. 20.

²⁶ Ex. 30; Test. of S. Rosensteel.

²⁷ Ex. 26.

32. The Respondent's loan application for the property is dated June 28, 2007. It provides that the source of the down payment was his checking or savings account, the balance of which was identified at \$177,288. The application provides that the Respondent had been employed with Split Rock Realty for four years and eleven months, that his current position was Development Manager, and that he had worked in the profession for five years. His monthly income was represented to be \$18,385. The purchase price was listed as \$425,000; the loan amount was listed as \$382,500; and the down payment was listed as \$36,551.56.²⁸

33. In the Schedule of Real Estate Owned, the application lists 6112 146th Avenue NW in Ramsey, with a market value of \$350,000, as Rental Property, with a monthly mortgage payment of \$3,561, and monthly rental income of \$1,500. Under the category of "Declarations," Respondent indicated that none of the down payment was borrowed, and that had had no ownership interest in a property in the last three years. Under the "Acknowledgement and Agreement," Respondent specifically represented to the lender that the information provided was true and correct as of the date signed. Amri Elsafy signed as the lender's assistant.²⁹

34. The sale closed on July 13, 2007. The HUD Settlement Statement for the property indicated that the purchase price was \$425,000, the new loan amount was \$382,500, and the cash from the borrower was \$42,099. A commission in the amount of \$42,995 was paid from the seller's funds to Options Plus Realty. The Acknowledgement of Receipt of Settlement Statement, which appeared in the paragraph above Respondent's signature, stated: "I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction."³⁰

35. On July 16, 2007, Options Plus Realty transferred \$41,500 from its account at Bremer Bank to the Respondent's account at Wells Fargo Bank for "2100 61st Street."³¹

36. Respondent lived in the property located at 2001 West 61st Street in Minneapolis for one or two years.³²

Purchase of 11257 77th Street, Otsego, Minnesota

37. On June 18, 2007, Respondent signed a Real Estate Purchase Agreement for 11257 77th Street, Otsego, Minnesota. The seller of the property was Northern Lakes Otsego, LLC. The purchase price was listed as \$350,000,

²⁸ Ex. 6.

²⁹ Ex. 6.

³⁰ Ex. 21.

³¹ Ex. 31; Test. of S. Rosensteel.

³² Test. of S. Rosensteel.

and the down payment was listed as \$35,000. Under "Agency Disclosures," the agreement stated that Thomas E. Rosensteel of Split Rock Realty, LLC, was a facilitator for the seller only and that R. S. Aslesen of Options Plus Realty, Inc. was a facilitator for the buyer only.³³

38. The Respondent's loan application for the property is dated June 28, 2007. The application provides that the source of the down payment was the Respondent's checking or savings account. The application further provides that the Respondent had been employed with Split Rock Realty for four years and eleven months, that his current position was Marketing and Development Manager, and that he had worked in the profession for five years. His monthly income was listed as \$18,385. It listed the purchase price for the property as \$350,000; the loan amount as \$315,000; and the down payment as \$35,025.94. Under the category of "Declarations," Respondent indicated that that no part of the down payment was borrowed and that he had not had an ownership interest in a property in the last three years.³⁴

39. The loan application included two Asset and Liabilities pages; one listed Respondent's Wells Fargo bank account with a balance of \$177,288, and the second page listed the same account but with a balance of \$57,288. The total value of other real estate owned was listed as \$700,425. On both of the Assets and Liabilities pages the application listed properties at 2001 W 61st Street, Minneapolis, valued at \$425,000; 6167 146th Avenue NW, Ramsey, valued at \$350,000, and 6118 146th Avenue, Ramsey, valued at \$350,000, in the schedule of real estate owned. Under the "Acknowledgement and Agreement," Respondent specifically represented to the lender that the information provided was true and correct as of the date signed. Amri Elsafy signed as the lender's assistant.³⁵

40. The Respondent used a cashier's check dated July 24, 2007, in the amount of \$40,000, as the down payment on the property. The funds were withdrawn from Amri Elsafy's account at Bremer Bank, but the remitter is identified as Sean Rosensteel.³⁶

41. The sale closed on July 25, 2007. The HUD Settlement Statement indicated that the purchase price was \$350,000, the new loan amount was \$315,000, and the cash from the borrower was \$37,172.76. It indicated that a commission in the amount of \$55,995 was paid to Options Plus Realty from the seller's funds. In the "Additional Disbursements Exhibit," the statement indicated that \$26,005 was paid to Split Rock Properties as a "subcontract payoff." The Acknowledgement of Receipt of Settlement Statement, which appeared in the paragraph above Respondent's signature, stated: "I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a

³³ Ex. 29.

³⁴ Ex. 9.

³⁵ *Id.*

³⁶ Ex. 14; Ex. 18; Test. of M. Boyer.

true and accurate statement of all receipts and disbursements made on my account or by me in this transaction.”³⁷

42. On July 27, 2007, Options Plus Realty transferred funds in the amount of \$109,000 from its account at Bremer Bank to Respondent’s account at Wells Fargo Bank.³⁸

43. On February 18, 2009, the lender foreclosed on the property located at 11257 77th Street in Otsego.³⁹

44. The Wright County tax records indicate that the property was sold in November 2009 for \$185,000.⁴⁰

Tax Returns, Auto Purchases and Bankruptcy

45. Respondent’s 2007 income tax return shows that Respondent earned no wages or salaries in 2007. His 2007 Schedule C showed that Respondent’s sole proprietorship, Rosenrod, Inc., grossed \$66,475 that year and produced net profits of \$44,536, which were offset by rental losses of \$40,468, for a total income of \$4,804.⁴¹

46. On July 13, 2007, Respondent obtained title to a 1999 Porsche, subject to a security interest of Porsche Financial Services.⁴²

47. On January 15, 2008, Respondent obtained title to a 2008 Jeep Grand Cherokee subject to the security interest of DC Financial Services of America, LLC.⁴³

48. Respondent filed for bankruptcy in July 2010. He presently lives in Winfield, Illinois. He works as a web consultant.⁴⁴

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The ALJ and the Commissioner of Commerce (Commissioner) have jurisdiction to consider this matter.⁴⁵

³⁷ Ex. 24.

³⁸ Ex. 33; Test. of S. Rosensteel. This payment appears to represent rebates paid on both 11257 77th Street in Otsego and 6118 146th Avenue NW in Ramsey.

³⁹ Ex. 37.

⁴⁰ Ex. 38.

⁴¹ Ex. 10.

⁴² Ex. 34.

⁴³ Ex. 35.

⁴⁴ Test. of S. Rosensteel.

2. Respondent received due, proper and timely notice of the charges against him and of the time and place of the hearing. He timely requested a hearing on the matter. This matter is, therefore, properly before the Commissioner and the Administrative Law judge.

3. If the Commissioner believes discipline of a license is merited, the Commissioner shall issue an order requiring a licensee to show cause why the license should not be revoked or suspended, or the licensee censured.⁴⁶

4. The Commissioner may deny, suspend, or revoke the authority or license of a person subject to the duties and responsibilities entrusted to the Commissioner, or censure that person if the Commissioner finds that the order is in the public interest and the person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the Commissioner.⁴⁷

5. The Commissioner may deny, suspend or revoke any real estate salespersons' license or may censure a license if the Commissioner finds that the order is in the public interest and that the licensee has engaged in a fraudulent, deceptive, or dishonest practice, or has, in the conduct of the licensee's affairs under the license, been shown to be incompetent, untrustworthy, or financially irresponsible.⁴⁸

6. The Commissioner may by order deny, suspend, or revoke any residential mortgage originator's license if the Commissioner finds that the order is in the public interest and that the licensee has violated a standard of conduct or engaged in a fraudulent, coercive, deceptive, or dishonest act or practice, whether or not the act or practice involves the residential mortgage lending business; or engaged in an act or practice, whether or not the act or practice involves the business of making a residential mortgage loan, that demonstrates untrustworthiness, financial irresponsibility, or incompetence.⁴⁹ There is no evidence that the Respondent participated in mortgage origination activities regulated under Chapter 58.⁵⁰ The Administrative Law Judge concludes this statute is not applicable to the Respondent.

7. Respondent provided false information regarding the balance in his bank account on five loan applications, and thereby demonstrated untrustworthiness and committed fraudulent, deceptive and dishonest acts or

⁴⁵ Minn. Stat. §§ 45.027, subd. 7 and 14.50.

⁴⁶ Minn. Stat. § 45.027, subd. 7(b).

⁴⁷ Minn. Stat. § 45.027, subd. 7(a)(1) & (a)(4).

⁴⁸ Minn. Stat. § 82.35, subd. 1(b) & 1(f) (2008).

⁴⁹ Minn. Stat. § 58.12, subd. 1(b)(2)(iv) & 1(b)(2)(v).

⁵⁰ Cf. Minn. Stat. § 82.35, subd. 1(h) (2008).

practices in violation of Minn. Stat. §§ 45.027, subd. 7(4); and 82.35, subd. 1(b) and 1(f) (2008).

8. Respondent provided false information about his income on five loan applications, and thereby demonstrated untrustworthiness and committed fraudulent, deceptive and dishonest acts or practices in violation of Minn. Stat. §§ 45.027, subd. 7(4); and 82.35, subd. 1(b) and 1(f) (2008).

9. Respondent represented on four loan applications that the down payment funds were his own and were not borrowed, and thereby demonstrated untrustworthiness and committed fraudulent, deceptive and dishonest acts or practices in violation of Minn. Stat. §§ 45.027, subd. 7(4); and 82.35, subd. 1(b) and 1(f) (2008).

10. Respondent represented on five loan applications that he had been employed by Split Rock Realty for more than three years, when the company had only been in existence for approximately two years, and thereby demonstrated untrustworthiness and committed fraudulent, deceptive and dishonest acts or practices in violation of Minn. Stat. §§ 45.027, subd. 7(4); and 82.35, subd. 1(b) and 1(f) (2008).

11. Respondent omitted references to prior real estate purchases on two loan applications, and thereby demonstrated untrustworthiness and committed fraudulent, deceptive and dishonest acts or practices in violation of Minn. Stat. §§ 45.027, subd. 7(4); and 82.35, subd. 1(b) and 1(f) (2008).

12. Respondent received undisclosed kickbacks ranging from \$40,000 to \$55,000 for five properties purchased in 2007, thereby demonstrating untrustworthiness and committing fraudulent, deceptive and dishonest acts or practices in violation of Minn. Stat. §§ 45.027, subd. 7(4); and 82.35, subd. 1(b) and 1(f) (2008).

13. Discipline of the Respondent's license is in the public interest.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Commerce take disciplinary action against the Respondent.

Dated: February 16, 2011

s/Karthleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Digitally recorded, no transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Deputy Commissioner Emmanuel Munson-Regala, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.63, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

MEMORANDUM

In July 2007, Respondent purchased five properties within two weeks for a total of \$1,825,000. To obtain the mortgages necessary to close these transactions, the Respondent represented in the loan applications and settlement statements that the funds used to make the down payments were his own and not borrowed, when in fact four of the down payments were provided by another person. Respondent certified on loan documents that his monthly income was \$18,385, which was far in excess of his true income. He certified on loan documents for each transaction that his liquid assets totaled approximately \$177,000, when they actually totaled approximately \$100. Respondent certified on loan documents that he had been employed by Split Rock Realty for four or five years, but he had only been associated with the company for two years. Respondent also omitted reference to prior real estate purchases in loan documents.

The Respondent appears to dispute that the lenders in these transactions were deceived, because their assistant, Amri Elsafi, participated in drafting the loan applications and had to have known of the material misrepresentations and

the real source of the funds used as down payments, as well as the kickback payments. It is not necessary to show that the lenders were in fact deceived, in order to find the Respondent's conduct to be untrustworthy, deceptive, or dishonest. The record reflects, however, that the Respondent participated, with the active assistance of the lender's assistant and others,⁵¹ in defrauding the lenders by submitting false information in support of the loans and using the loan proceeds in a manner that was not disclosed to the lenders.

Even if the Administrative Law Judge fully credits the Respondent's testimony that he signed at least some of the loan applications in blank and allowed Amri Elsafi to complete them later, the Respondent still allowed these transactions to close based on many false statements that are apparent from the face of the documents, and which he certified to be true at the time of the closings. Discipline of the Respondent's license is fully warranted.

K.D.S.

⁵¹ There are pending contested cases involving some of the other parties to these transactions. These other parties did not participate in this matter, and they are not bound in any way by the factual findings made in this Report.